



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

OFFICE OF THE
REGIONAL
ADMINISTRATOR

MAR 15 2016

Mr. Donald McNutt
Chairman, PSTIF
Chief Executive Officer President
Midwest Petroleum
6760 Southwest Avenue
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Missouri Department of Natural Resources
1101 Riverside Drive
P.O. Box 176
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Dear Mesdames and Messrs.:

I am writing to raise the U.S. Environmental Protection Agency's concern about delays in funding investigatory and response actions for underground storage tank releases by Missouri's Petroleum Storage Tank Insurance Fund. Where human exposures to petroleum vapors have been documented, delays in conducting complete investigations and implementing remedies are unacceptable.

These concerns are evidenced by two underground storage tank sites in Kansas City, Missouri: Zill's at 31st and Cleveland, and the Main Street Shell at 38th and Main. Remediation work at these sites, where people have been exposed to petroleum vapors in their homes, has been delayed for months due to arguments about responsible parties and which components of work the PSTIF will cover. In the case of the Zill site, based on a refusal to fund the work, the Missouri Department of Natural Resources is seeking to enforce its cleanup order in state court.

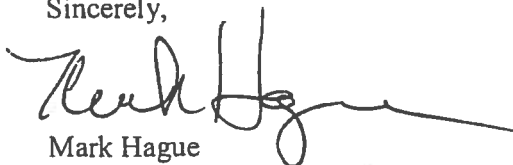
The federal regulations governing the Underground Storage Tank state program approval process require a financial responsibility mechanism because of the need to establish a safety net that finances *immediate and thorough* corrective action and compensation when a release does occur. Missouri's regulations reflect the importance of that need: PSTIF's Board of Trustees approves cleanup costs prior to work beginning on a site, *except in cases involving "costs of necessary first aid or emergency response."* Title 10, Missouri Code of State Regulations, 100-5.010(2)(A). Public exposures are unnecessarily prolonged if PSTIF disregards or diminishes the scope of this exception.

The EPA understands that PSTIF's Board of Trustees is responsible for the fiduciary management of the fund, and that it has the authority to make a determination concerning eligibility issues, including whether costs for products and services were reasonable and whether the costs incurred were necessary to achieve the cleanup required by the MDNR. However, PSTIF is by regulation prohibited from oversight regarding environmental cleanup standards for petroleum storage tanks. Section 319.129(12), Revised Statutes of Missouri.

The EPA and the MDNR have expressed concerns that PSTIF's involvement in specific sites exceeded this statutory prohibition. In the EPA's FY2012 Review of Missouri's Underground Storage Tank Program – Corrective Action Component, the results of which were sent to the Board, the EPA cited concerns that PSTIF's "reasonable cost" review regularly extended beyond pricing issues to technical decisions, effectively changing the scope of work that the MDNR (and in some cases, the responsible party and the consultant) believed to be necessary. It appears that the current process continues to limit the scope and extent of investigations and even prevent appropriate corrective actions from being taken. Delays due to issues like those cited in the report are a detriment to those living in and around these leaking UST sites.

The EPA urges the PSTIF to promptly fund actions required by the MDNR at sites where human health risks are present. If we can be of assistance, please contact John Smith at smith.john@epa.gov or 913-551-7845.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Hague', with a long horizontal flourish extending to the right.

Mark Hague

cc: Governor Jay Nixon
P.O. Box 720
Jefferson City, Missouri 65102

Rep. Emanuel Cleaver
101 W. 31 Street
Kansas City, Missouri 64108

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414 E. 12th Street, 16th Floor
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JEREMIAH W. (JAY) NIXON
GOVERNOR

DON MCNUTT
CHAIRMAN
BOARD OF TRUSTEES

March 31, 2016

Mark Hague
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, KS 66219

Dear Mr. Hague:

I am writing on behalf of the Board of Trustees of the Missouri Petroleum Storage Tank Insurance Fund (Board) in response to your March 15, 2016 letter. In your letter you express concern about what you identify as delays caused by the Missouri Petroleum Storage Tank Insurance Fund (PSTIF) in funding investigatory and response actions for underground storage tank releases, particularly when human exposure is at issue. You reference in particular two sites in Missouri of concern.

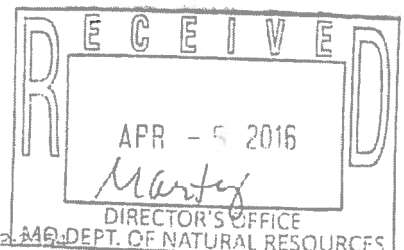
The Board is proud of the program it has established in Missouri, and takes seriously its fiduciary responsibilities to trust fund participants who rely upon our services. At the Board's most recent meeting, the Board discussed your letter and requested both our staff and the Missouri Department of Natural Resources (DNR) provide further information regarding pertinent and long standing claims so we can better understand the issues in dispute that provide challenges to both the DNR and our staff. The Trustees desire to more fully understand any hindrances that may be preventing cleanups from occurring quickly and effectively.

Our staff is concerned that its outreach efforts and attempts to foster communication and resolve disputes have been marginalized. Further, there is a concern that your letter is based on less than a full understanding of the facts. PSTIF Trustees and staff are available to discuss issues of concern, should you feel such communication would be beneficial. For example, you mentioned the EPA's FY2012 Review of the cleanup oversight component of Missouri's Underground Storage Tank Program. As indicated after the report was issued, our staff would have valued the opportunity to present its opinions and experiences on the matter before the report was finalized; we understand your staff plans to again review that element of Missouri's program this spring and that our staff has already reached out to your staff to invite that dialogue.



Petroleum Storage Tank Insurance Fund

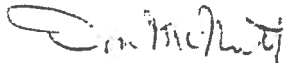
P O Box 836 • JEFFERSON CITY, MO 65102 • PHONE (573) 522-2352 • FAX (573) 522-2412



Letter to Mark Hague, U.S. EPA – Region 7
March 31, 2016
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There will always be a natural tension between regulators and the entities being regulated and their insurer, but we understand such relationships need to be monitored. We do not believe any of our actions, nor those of our staff, contradict our statutory mandate and authority; however, please be assured we will investigate your concerns and take appropriate actions.

Sincerely,



Don McNutt
Chairman

DLM/CRE/dmj

cc: Governor Jay Nixon
Attorney General Chris Koster
Congressman Emanuel Cleaver
DNR Director Sara Pauley
Andrew Bracker, City of Kansas City
PSTIF Trustees



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MAY 11 2016

Mr. Donald McNutt
Chairman, PSTIF
Chief Executive Officer/President
Midwest Petroleum
6760 Southwest Avenue
St. Louis, Missouri 63143

Dear Mr. McNutt:

Thank you for your letter dated March 31, 2016. We appreciate the importance of a fiscally sound insurance fund in protecting public health. The public health in Missouri is best protected, and the purpose and intent of the underground storage tank regulations met, when a well-managed fund promptly finances complete investigations and appropriate remedies, as determined by the technical experts at the Missouri Department of Natural Resources. It is the U.S. Environmental Protection Agency's responsibility to ensure that each state's UST financial responsibility mechanism is viable, operates in accordance with federal requirements, and continues to be approvable as the state mechanism for ensuring that tank owners and operators have access to the financial resources necessary to ensure that releases from their tanks are cleaned up to levels required by the authorized state UST program.

As you noted, the EPA will be conducting a comprehensive evaluation of the timing, scope of funding, investigatory and response actions for underground storage tank releases during our upcoming 2016 underground storage tank program review. We look forward to a dialogue with the Petroleum Storage Tank Insurance Fund as part of that review. This year's review will be particularly helpful as we evaluate the state's program in light of the state program authorization renewal process.

In the meantime, we will continue to engage on site-specific issues where public health may be at risk and there are questions raised about the adequacy of the state's response. Such are the situations at the Zill's site at 31st and Cleveland, and the Main Street Shell site at 38th and Main in Kansas City. Related to those matters, we remind you that the amount of financial assurance required, pursuant to federal and state law, does not include legal defense costs.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Hague".

Mark Hague

cc: Governor Jay Nixon

